

Technical Data Certification, Revision, and Withholding of Payment (April 1985)

(e) *Scope of clause.* This clause shall apply to all technical data (as defined in the Rights in Data—General clause included in this contract) that has been specified in this contract as being subject to this clause. It shall apply to all such data delivered, or required to be delivered, at any time during contract performance or within 3 years after acceptance of all items (other than technical data) delivered under this contract unless a different period is set forth herein. The Contracting Officer may release the Contractor from all or part of the requirements of this clause for specifically identified technical data items at any time during the period covered by this clause.

(b) *Technical data certification.* (1) All technical data that is subject to this clause shall be accompanied by the following certification upon delivery:

Technical Data Certification (April 1985)

The Contractor, —, hereby certifies that the technical data delivered herewith under Government contract No. — (and subcontract —, if appropriate) is complete, accurate, and complies with the requirements of the contract concerning such technical data.

(End of certification)

(2) The Government shall rely on the above certification in accepting delivery of the technical data, and in consideration thereof may, at any time during the period covered by this clause, request correction of any deficiencies which, in its opinion, are not in compliance with contract requirements. Unauthorized markings on data shall not be considered a deficiency for the purpose of this clause, but will be treated in accordance with paragraph (e) of the Rights in Data—General clause included in this contract.

(c) *Technical data revision.* The Contractor also agrees, at the request of the Contracting Officer, to revise technical data that is subject to this clause to reflect engineering design changes made during the performance of this contract and affecting the form, fit, and function of any item (other than technical data) delivered under this contract. The Contractor will be compensated for any such revisions to the technical data made pursuant to this paragraph.

(d) *Withholding of payment.* (1) At any time before final payment under this contract the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding \$50,000 or 5% of the amount of this contract, whichever is less, shall have been set aside if, in the Contracting Officer's opinion respecting any technical data that is subject to this clause, the Contractor fails to—

- (i) Make timely delivery of such technical data as required by this contract;
- (ii) Provide the certification required by subparagraph (b)(1) above;
- (iii) Make the corrections required by subparagraph (b)(2) above; or
- (iv) Make revisions requested under paragraph (c) above.

(2) Such reserve or balance shall be withheld until the Contracting Officer has

determined that the Contractor has delivered the data and/or has made the required corrections or revisions. Withholding shall not be made if the failure to make timely delivery, and/or the deficiencies relating to delivered data, arose out of causes beyond the control of the Contractor and without the fault or negligence of the Contractor.

(3) The Contracting Officer may decrease or increase the sums withheld up to the sums authorized above. The amount withheld under this paragraph shall be in addition to any withholding under any other terms of this contract. The withholding of any amount under this paragraph, or the subsequent payment thereof, shall not be construed as a waiver of any Government rights.

(End of clause)

1852.232-77 [Amended]

28. Section 1852.232-77, the introductory text, is revised by changing "1832.705-270(b) to "1832.705-270".

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DEPARTMENT OF TRANSPORTATION**Research and Special Programs Administration****49 CFR Part 173**

[Docket HM-139G; Amdt. Nos. 172-87, 173-187, 178-84, and 179-38]

Conversion of Individual Exemptions Into Regulations of General Applicability**Correction**

In FR Doc. 85-6846 beginning on page 11700 in the issue of Monday, March 25, 1985, make the following correction:

§ 173.100 [Corrected]

On page 11702, third column, in § 178.100(ii), which was corrected to read § 173.100(ii) at 50 FR 12544, in the second line from the bottom, "of" should read "or".

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Federal Railroad Administration**49 CFR Part 215**

[FRA Docket No. RSFC-8, Notice 11]

Railroad Freight Car Safety Standards

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Amendment of final rule.

SUMMARY: This document amends the final rule published on December 31, 1979 (44 FR 77328), which revised the Freight Car Safety Standards (49 CFR Part 215). It makes a technical correction

to one section to eliminate confusion over the proper measurement of the extensiveness of discoloration found on freight car wheels due to an oxidation process that occurs after a wheel has been subjected to thermal abuse.

EFFECTIVE DATE: May 6, 1985.

FOR FURTHER INFORMATION CONTACT: Philip Olekszyk, Office of Safety, Federal Railroad Administration, Washington, D.C. 20590, telephone (202) 426-0897.

SUPPLEMENTARY INFORMATION: On June 22, 1984, FRA published in the Federal Register (49 FR 25845) a notice of proposed rulemaking (NPRM) to respond to a number of communications that it had received concerning the intent and appropriate interpretation of the language contained in § 215.103(h) of its Freight Car Safety Standards (49 CFR Part 215). This section prohibits a railroad from keeping a freight car in service if it has a defective wheel. Since a wheel that has been thermally abused presents a significant risk of sudden failure and consequent derailment, subsection (h) defines such wheels as defective: when they show symptoms that have been associated with thermal abuse.

For the reasons detailed in the preamble to the NPRM, the existing language of this section, read literally, has a more restrictive effect than FRA intended. To eliminate the resulting confusion over this provision and to state the agency's intent more clearly, FRA proposed to amend § 215.103(h) to specify that: (i) Discoloration must be present on both faces of a freight car wheel, (ii) measurement can be made on either face, and (iii) measurements are to be made from the inner edge of the wheel rim.

Two commenters responded to the NPRM by urging that FRA correct the deficiencies in the existing rule and agreeing that FRA's proposed rule would improve the section. However, one commenter cautioned that if one face of the wheel is obscured by grime, grease, or environmental conditions present in some loading and unloading facilities, it may be difficult to observe both faces of the wheel. In supporting the change, both commenters agreed with FRA's technical analysis that oxidation discoloration from a sufficient heat input will occur on both sides of the wheel and supported FRA's proposal that its rule reflect this fact.

One commenter urged FRA to go well beyond the very limited scope of the present proposal. This commenter urged that FRA alter the criteria for suspected thermal abuse in several particulars and